[श्री भंवर लाल पंवार]

खड़ा किया जा सकता है। परन्तु उस ओर ध्यान नहीं दिया जा रहा है। इसलिये मैं आपके माध्यम स, इस सदन के माध्यम से भारत सरकार से निवेदन करना चाहूंगा कि इस खनिज पदार्थ के दोहन के लिये अविलम्ब कार्यवाही की जाये और राजस्थान सरकार को इस तरफ कोई ध्यान न दिये जाने पर अविलम्ब बर्खास्त कर वहां राष्ट्रपति शासन लागू कर इस खनिज पदार्थ का दोहन कराया जाये। धन्यवाद।

THE FAMILY COURTS (AMEND. MENT) BILL, 1990—Contd.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Now we shall take up the Family Courts (Amendment) Bill, 1990. Shri Narayanasamy.

SHRI V. NARAYANASAMY (Pondicherry) : Vice-Chairman, Sir, thank you very much for giving me this opportunity to speak on this Bill. It is only an amendment which seeks to clarify the legal procedure relating to appeals and revision. Under the original Bill, there was a provision for appeal as regards the order passed by the Family Courts. But under section 125 of the Criminal Procedure Code there can be a ground for revision. The Criminal Procedure Code provided for maintenance and now by this amendment the original position is being restored. It seeks to give powers to the High Court to interfere. It is a very simple Bill. The original Bill was introduced in both the Houses of Parliament in 1984. The objective of this Bill is to give social justice to the woman, their family members who are involved in disputes like the marriage dispute, then the judicial separation, maintenance, guardianship rights and especially divorce. Originally the proceedings under the Hindu Marriage Act were held in the open courts and it was very embarrassing for the spouses to reveal facts or give evidence. Hence it was decided to give protection to me spouses by holding tne proceedings in camera. Sir, this Bill has been introduced to give social justice. But I was surprised to find that the States of Bihar, Andhra Pradesh and the North-Eastern States have not yet come forward to notify the Act in their respective States. There are no Family Courts in these Status. I would like to know from the Minister as to why these States have not come forward to implement this particular Act in their States. In 1984. this Act was passed hurriedly as the Government wanted to give protection to the families concerned. But, now even after six to seven years after the Act has come into force some States do not have these Family Courts. Why, even Delhi does not have the facility of having Family Courts. I have gone through records and I And that more than 10,000 disputes are pending in the courts. The cases relate to matrimonial matters ana family affairs. Bihar and Andhra Pradesh have *so* far not taken any steps in this direction. Sir, I would also like to seek another clarification from the Minister. The rules framed do not give a clear picture about how the special judges are appointed to the Family Courts. Normally, what the States do is that they take one of the District Judges on the panel which they have and they appoint him as a Judge of the Family Court. The purpose ci the enactment is to see that Judges who have experience of dealing wini matrimonial matters are appointed because the approach of the Civil Courts and the approach of the Family Courts are entirely different in regard to these disputes. I would say that in the various Family Courts, Judges who are on the panel of District Judges and who are dealing with ordinary matters are appointed as Judges. Therefore, I would like to request the honourable Minister to clarify whether the Judges appointed as Judges of the Family Courts are from the panels or not.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Please be brief.

SHRI V. NARAYANASAMY: I am concluding now, Sir. .

i Sir, the purpose of wringing for- ward this Bill is to give protection to the weaker section, that is, women. But, under this Bill, there is no provision for giving legal aid to the weaker section that is, women, who are suffering because they have nc financial support. When the husbands desert their wives with children, they suffer. When the divorce proceedings are pending and when the maintenance issues are to be settled, they cannot go to the court and they cannot get the remedy quickly. So, legal aid has to be provided to them. I would, therefore, like to suggest that the Government can think of giving protection to such women by arranging advocates or representatives like *Amicus Curiae* to plead their cases. There is another aspect. The Family Courts are functioning only as consciliatory Courts and to render social justice. Harassment is caused to women by their husbands. Now, there is the Dowry Deaths Act which has a separate provision. Under the general law, that is, Cr. PC and IPC, when an injury is caused to a women, she can move the Court for remedy. But this takes a long time. I would like to suggest to the honourable Minister to give more powers to the Family Courts, powers even to deal with cases which are criminal, offences also, apart from matrimonial matters, so that the Family Courts Act becomes complete and proves very effective.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Please conclude now.

SHRI V. 'NARAYANASAMY: I come to my last suggestion, Sir.

Sir, the Family Courts are decided on the basis of population. Family Courts are set up in districts which have a population of one million. My i humble suggestion is that the Family Courts need not be formed according to population, but they can be formed on the "basis of districts identified by the State Governments concerned. Certain districts have been identified by the various States and the Family Courts can be formed on the basis of the districts so identified.

I am sorry to say that the purpose of bringing forward the Family Courts Bill has been defeated by the action of the various State Governments. I would, therefore, request the Minister to take immediate and necessary steps so that the Family Courts can be set up in the other States also, where they have not so far been set up, by the concerned State Governments. Thank you Sir.

श्रीमति सरला महेश्वरी (पश्चिमी बंगाल) : माननीय उपसभाध्यक्ष महोदय, दाम्पत्य रिश्तों और पारिवारिक संबधों की नाजुकता और उनकी संवेदनशीलता को देखते हुए कुटुम्ब न्यायालयों की अवधारणा हमारे सामने आई। विभिन्न देशों के अनुभवों को देखते हुए महिलाओं के संबंध में नियुक्त स्टेट्स कमेटी की रिपोर्ट और उसकी सिफरिशों को देखते हुए विभिन्न संगठनों की मांग के चलते यह कुटुम्ब न्यायालय विधेयक हमारे यहां लाया गया था और सातवीं लोक सभा के अंतिम दिन इसे अत्यंत जल्दी में पास करवाया गया।

महोदय, कुटुम्ब न्यायालयों के पीछे जो उद्देष्य था, जो मकसद था वह मकसद यह थी कि दीवानी अदालतों की लम्बी प्रक्रिया से अलग हटकर वादी-प्रतिवादी, पक्ष-विपक्ष और मुकदमे की जीत-हार से परे पारिवारिक संबध और कौटुम्बिक मामलों कै बातचीत के जरिए, सलाह-मशविरे के जरिये, कम समयावधि में हल कर लिया जाए। इसलिए कौटुम्बिक न्यायालयों की अवधारणा हमारे सामने आई। माननीय उपसभाध्यक्ष महोदय, जाहिर है चुनाव मैदान में उतरने से पहले सरकार द्वारा अपने कामों की

[श्रीमती सरला माहेश्वरी]

प्रगति के आंकड़े बढ़ा लेने के उद्देश्य से अगर कोई काम किया जाता है तो उस काम से सरकार अपनी प्रगति के आंकड़े तो जरूर बढ़ा लेती है लेकिन उससे व्यापक सामाजिक हितों की रक्षा नहीं की जा सकती। कुटुम्ब न्यायालय का उदाहरण हमारे सामने स्पष्ट है कि विधेयक के पास हो जाने के 7 वर्षों बाद भी स्वयं मंत्री महोदय ने बताया है कि सिर्फ सात राज्यों में यह काम हो रहा है। बहरहाल यह किस तरह से काम कर रहे हैं, उनकी हालत क्या है इसके बारे में मंत्री महोदय ने हमें नहीं बताया और अन्य राज्यों में यह स्थापित क्यों नहीं हो सके इसके भी कारण उन्होंने नहीं बतायें। क्योंकि राज्य सरकारें असमर्थ हैं, सिर्फ विधेयक बना दिया जाय और उसके लिए एक ढांचा खड़ा किया तो सिर्फ बातें हवा में होती हैं। राज्य सरकारें आर्थिक स्रोतों के अभाव में कुटुम्ब न्यायालय स्थापित करने में असमर्थ रहीं। इसलिए मैं निवेदन करना चाहती हूं कि योजना आयोग इस मामले में निर्णय ले और आर्थिक सहायता इस मामले में राज्य सरकारों को दी जाए। इसी मद में निश्चित आर्थिक राशि सुनिश्चित की जाए ताकि कौटुम्बिक न्यायालय विभिन्न राज्यों में काम कर सकें।

इस विधेयक में यह कहा गया है कि कुटुम्ब न्यायालय विधेयक का उद्देश्य है वैवाहिक संस्था की रक्षा करना। जाहिर है जब हम विवाह को एक संस्था मानते हैं तो उस संस्था के अपने विधान भी होते हैं। उसके अन्तरनिहित विधान होते हैं। उसके अपने कानून होते हैं। उसकी अपनी मर्यादाएं होती हैं। जब कोई व्यक्ति विवाह करता है तो उस विवाह की खोज नहीं करता। विवाह का अन्वेषण नहीं करता बल्कि विवाह के नियमों को अपनाता है। दूसरे शब्दों में वह इस दायित्व को स्वीकारता है। विवाह के साथ परिवार की एक पूरी अवधारणा जुड़ी हुई है। सामाजिक दायित्वों का प्रसंग है, परिवार का प्रसंग है। इसलिए विवाह व्यक्ति की इच्छा या अनिच्छा पर निर्भर कर सकता है लेकिन व्यक्ति एक बार विवाह के बंधन में बंधता है तो उसे उस विवाह के बंधनों को और विवाह विच्छेद के बंधनों को भी स्वीकारना होगा। क्योंकि विवाह का आधार परिवार है और परिवार का आधार समाज है इसलिए कानून की आवश्यकता है। वरना दोस्ती के लिए किसी कानून की आवश्यकता नहीं होती है। आप दोस्ती तोड़ देते हैं तो इसके लिए कोई अदालत आपको दोषी नहीं ठहराता। इसके लिए कानून आपको दोषी नहीं ठहराता। लेकिन आप विवाह विच्छेद करते हैं मनमाने ढंग से तो निश्चित रूप से विवाह के कानून को तोड़ कर, इसके अन्तरनिहित विधानों को तोड़ कर आप को दंड का भागीदार होना होगा। मैं महिला आंदोलन से जुड़ी होने के कारण स्वेच्छाचारी ढंग से तलाक, विवाह विच्छेद का समर्थन नहीं कर सकती। मुझे ये दोनों बातें महिलाओं के साथ खिलवाड़ करने जैसी लगती हैं।

आपको यह जानकर आश्चर्य होगा कि कार्ल मार्क्स को अपने जीवनकाल में तलाक संबंधी विधेयक पर चर्चा करने का मौका मिला। इस विधेयक पर चर्चा करते हुए उन्होंने बहुत ही महत्वपूर्ण बात रखी थी। उन्होंने इस बात को रखा था कि विवाह का जो धर्म निरपेक्ष मूलभूत सार है उस धर्म निरपेक्ष मूलभूत सार को हमें नहीं भूलना चाहिए। विवाह किसी वैवाहिक युगल की इच्छा पर निर्भर नहीं हो सकता। विवाह परिवार से जुड़ा होता है और समाज से जुड़ा होता है इसलिए विवाह के अपने अन्तरनिहित विधान होते हैं। उसकी अपनी अन्तरनिहित बंदिशें हैं। उनको हमें स्वीकारना चाहिए। विवाहित युगल के बारे में उन्होंने एक बात कही थी। जो लोग सिर्फ तलाक का झंडा उठाये रहते हैं उन पर कटाक्ष करते हुए कहा था कि वे विवाहित युगल सिर्फ विवाह की इच्छा पर नहीं सोचते, सिर्फ अपनी सनक पर सोचते हैं। जाहिर है परिवार और बच्चों के भविष्य को एक विवाहित युगल की सनक पर नहीं छोड़ा जा सकता। यह बहुत महत्वपूर्ण मसला था कि किसी तरह से विवाह विच्छेद और तलाक जैसे मसलों को विवाहित युगल की सनक पर नहीं

छोड़ा जा सकता । विवाह संस्था की रक्षा करना समाज का दायित्व है और इसलिए निश्चित रूप में इसके लिए कानून बने हैं। सवाल यह है कि जब हम विवाह को परिवार का आधार मानते हैं और इसकी सामाजिक बाध्यता को स्वीकार करते हैं तो हमें यह देखना होगा कि समाज में उसकी हालत क्या है ? मैं कहना चाहूंगी कि आज हमारे समाज में क्या विवाह अपने अन्तर्निहित विधानों से जुड़ा हुआ है ? इसी विवाह के संदर्भ में कि शादी क्या है, मुझे प्रेमचन्द की एक दिलचस्प कहानी याद आती है । प्रेमचन्द ने कहानी लिखी थी 'शादी की वजह''। इस कहानी में उन्होंने विभिन्न लोगों से पूछा था कि आप शादी क्यों करते हैं । इस कहानी में उनको जो जवाब मिलता है वह इस प्रकार है—एक व्यक्ति कहता है कि साहब, मैंने शादी इसलिए की है कि वह यानी मेरी पत्नी अपने पिता की इकलौती बेटी है और पिता भी बहुत धनवान व्यक्ति थे । इसके साथ ही दूसरा व्यक्ति कहता है कि मुझे रसोइया नहीं मिलता था, नौकर नहीं मिलता था और वह भी टिकाऊ नौकर नहीं मिलता था और खास तौर पर खाना बनाने के लिए कोई मिलता नहीं था और इसलिए खाना बनाने की छुट्टी पाने के लिए मैंने शादी कर ली । तीसरा व्यक्ति कहता है कि मुझे रोज आफिस जाना पड़ता था, आफिस जाने से पहले घर में रोज ताला लगाना पड़ता था । इसलिए इस मुसीबत से छुटकारा पाने के लिए मैंने शादी कर ली । चौथा कहता है कि साहब, तलाक देने की इच्छा हो गई, इसलिए शादी कर ली । कोई नौकर-कम-रसोइये के लिए शादी करता है, कोई चौकीदारी करवाने के लिए शादी करता है और कोई पहरेदारी करवाने के लिए शादी करता है । कोई पहली बीवी के बच्चों को पालने के लिए शादी करता है । यानी मतलब यह है कि शादी का जो मूलभूत मानवोचित रूप है वह मूलभूत मानवोचित रूप आज हमारे समाज से उठ चुका है । जाहिर है कि यह विवाह की इच्छा की विकृति है और इस विकृति हो गयी विवाह संस्था को इस रूप में स्वीकार नहीं किया जा सकता है । इसलिए मैं कहना चाहूंगी कि आज विवाह संस्था में जो विकृति आ गई है उस विकृति को खत्म करने के लिए अगर हमारे मंत्री महोदय यह चाहते हैं कि हम कुटुम्ब न्यायालय विधेयक के जरिये से विवाह संस्था की रक्षा कर सकते हैं तो मैं कहना चाहूंगी कि इस विधेयक के जरिये सिर्फ रक्षा नहीं की जा सकती है । इसके लिए और भी जरूरी है कि कानून में महिलाओं को जो विभिन्न अधिकार मिले हुए हैं उनका मानवोचित स्तर पर मूल्यांकन किया जा सके, इसके लिए आधार भूमि तैयार करनी होगी । महिलायें समाज के हर स्तर पर पुरुषों के बराबर समान रूप से भागीदार बन कर खड़ी हो सकें, इसके लिए जरूरी है कि हम उस रूप में उनको अधिकार दें। इस संदर्भ में मैंने संशोधन भी पेश किया है। चूंकि आप बोल रहे हैं कि समय कम है, इसलिए मैं अपने संशोधन पर बाद में बोलूंगी । मैं इतना ही कहकर आपका धन्यवाद करती हूं ।

DR. YELAMANCHILI SIVAJI (Andhra Pradesh): It is a very small Bill. I am glad that the Government came out with this proposal. Actually this Bill was introduced by Shri Dinesh Goswami, I believe. There is nothing to be discussed. The Government should make it a point that it is being implemented in all the States. The Government should pursue it with the State Governments to see that it is implemented. There is a provision for revision also. And pending finalisation of the revision petition some assistance may be extended to the affected parties because most of them are in a state of destitution. Nobody is there to look after them. Therefore, I would like to advise that they should be given assistance pending finalisation of the revision petition. In several places *Amicus Curiae* or the Government Standing Counsel may be asked to assit the cases in the Family Courts. It is a fact that in almost all States, whether they are Consumer Courts or whatever they are, the necessary

[Dr. Yelamanchili Sivaji] staff pattern is not allotted by the Government. I hope that the Government will see to it that for the family courts, necessary staff is sanctioned and they are allowed to function properly.

It is a fact that number of cases are pending in several courts, starting from, the Supreme Court down to lower courts. The Supreme Court is overburdened ■ with such cases. Since the Minister of Law as well as his State Minister are from the South, I hope they would consider establishment of a bench of the Supreme Court in one of the Southern States, whether it is in Tamil Nadu or Karnataka or Andhra Pradesh. They should see to it that a bench of the Supreme Court is set up in one of the Southern States.

[The Vice-Chairman (Shri Bhaskar Annaji Masodkar) in the Chair]

श्रीमती सत्या बहिन (उत्तर प्रदेश) : माननीय उपसभाध्यक्ष महोदय, मैं मंत्री महोदय की हृदय से धन्यवादी हूं जो वे कुटुम्ब न्यायालय (संशोधन) विधेयक लाये है। मैं विधेयक का तहेदिल से स्वागत करती हूं और इसका समर्थन करते हुए कहना चाहती हूं कि कुटुम्ब न्यायालय के संबंध में जो यह संशोधन विधेयक लाया गया है, यह बहुत अच्छे लक्ष्य की पूर्ति के लिये लाया गया है। इससे न केवल कुटुम्ब न्यायालयों की प्रतिष्ठा बढ़ेगी बल्कि इससे उनकी विश्वसनीयता भी बढ़ेगी और जो पारिवारिक न्यायालयों का लक्ष्य है, उसकी पूर्ति करने में बहुत ही आसानी होगी।

सन्यवर, दिसंबर, 1989 में मुख्य न्यायाधीशों के सम्मेलन में यह सिफारिश की गई थी कि कुटुम्ब न्यायालय अधिनियम, 1984 की दंड प्रकिया संहिता 1973 की धारा 125 के अधीन कुटुम्ब न्यायालय के आदेशों के विरुद्ध न्यायालयों में अपील की जाती थी,—उस अपील को हटाकर इसके स्थान पर रिवीजन या पुनरीक्षण की व्यवस्था की जाय, इसका उपबंध किया जाय। वास्तव में यह बहुत अच्छी बात है। हमारा भारतीय समाज पारिवारिक तानों-बानों और भावात्मक रिश्तों से जुड़ा हुआ है। हमारे आपस में जो रिश्ते हैं, चाहे पति-पत्नी का रिश्ता हो, चाहे पिता-पुत्र का रिश्ता हो, चाहे मां-बेटे का रिश्ता हो सभी रिश्ते भावात्मक हैं और पक्ष और विपक्ष इससे प्रभावित होता है और हम इन रिश्तों को नकार नहीं सकते, इन रिश्तों को हमें ध्यान में रखना पड़ता है। पहले जब कुटुम्ब न्यायालय की बात चली तो मैं यह कहना चाहती हूं कि कुटुम्ब न्यायालयों के साथ ही स्थानीय स्तर पर जो पहले अदालतें थीं, उनके माध्यम से विवाह संबंधों को आपसी बातचीत के जरिये सुलझाने की जो प्रक्रिया अपनाई जाती थी, हालांकि पारिवारिक संस्कारों की भावना और उसकी मर्यादा को कायम रखने के लिये इस तरह की प्रक्रिया थी कि आपसी स्तर पर आपसी बातचीत से बिना किसी ज्यादा कटुता के उन आपसी रिश्तों को एक भावात्मक रिश्ता बनाते हुए, जहां तक हो दोनों पक्ष अपने विवादों को आपसी सलाह से तय कर लेते थे। लेकिन इसमें जो लक्ष्य था उसको पूरा करने में बहुत कठिनाई आती थी, उसमें बहुत जटिलता थी। इसकी वजह यह थी कि किसी भी पक्ष के ऊपर लोक अदालतों की अनिवार्यता नहीं होती थी, किसी तरह की बाउंडेशन नहीं होती थी कि अगर हम इन अदालतों में जायेंगे तो हमारे ऊपर या दूसरे पक्ष के ऊपर कोई कानून लागू होगा या नहीं। मैं खुद ही लोक अदालतों में भाग लेती रही हूं, लोक अदालत के सदस्य के नाते। तो क्या होता था कि कई बार महिला पक्ष, जो पीड़ित होता था, तो पुरुष पक्ष जिसके विरुद्ध शिकायत होती थी, वह वहां आता ही नहीं था और मामला आखिर में जहां का तहां रह जाता था। भारतीय समाज में जो भावना व्याप्त है उसके अनुसार महिलायें अदालतों में जाने से बहुत कतराती हैं। उसे सामाजिक तिरस्कार का सामना करना पड़ता है। अगर कोई महिला अदालत में जाए तो उसके परिवार वाले भी अपने आपको लज्जित या महसूस करते हैं और समाज से कटे हुए महसूस करते हैं। यह समाज में जो पक्ष और प्रतिपक्ष को

Contd.

आपसी बातचीत के द्वारा अधिकार दिलाने की और न्याय दिलाने की जो प्रक्रिया है, उसको बहाल रखते हुए जो अधिनियम में संशोधन लाए हैं, मैं इसका हृदय से स्वागत करती हूं और तहे दिल से समर्थन करती हूं । साथ ही माननीय मंत्री जी से यह निवेदन करना चाहती हूं कि कुटुम्ब न्यायालयों में काम करने वाले जो न्यायाधीश हैं, उन्हें इस बात का विशेष ध्यान रखना चाहिये कि उसमें ऐसे व्यक्तियों की नियुक्ति की जाए जो महिलाओं के प्रति विशेष मानवीय भावना और सद्भावना रखते हों । ऐसे लोगों को अधिनियम के तहत चाहे वे किसी भी स्तर के न्यायाधीश हों या कर्मचारीगण हों उनको अगर रखा जाएगा तो मैं समझती हूं कि कुटुम्ब न्यायालय का लक्ष्य हम प्राप्त कर सकेंगे । इसके साथ ही मैं संक्षेप में एक बात और कहना चाहती हूं। हमारे यहां भारत में बहुत से ऐसे प्रदेश हैं जहां पर यह कुटुम्ब न्यायालय नहीं हैं । मेरा निवेदन है कि देश भर में एक सामन्य जन प्रक्रिया के अन्तर्गत सभी राज्यों में कुटुम्ब न्यायालय खोलने की व्यवस्था की जाए । दूसरा यह है कि जो दहेज विरोधी सेल हैं, दिल्ली में भी एक दहेज विरोधी सेल है जो पुलिस अधिकारियों की देखरेख में चलता है । वहां पर हमारे समाज में जो महिलाएं हैं जिनमें अधिकतर परित्यक्ता होती हैं या जिनके संबंध या रिश्ते होते होते टूट जाते हैं चाहे वह दहेज के कारण हों या किसी अन्य कारणवश हों उनमें भी मैंने देखा है कि कई बार महिलाओं को ठीक से न्याय नहीं मिल पाता है । बार बार उधर आना-जाना पड़ता है । एक बार, दो बार, चार बार, दस बार चक्कर लगाते-लगाते महिलाएं परेशान हो जाती हैं । विरोध पक्ष घर में बैठ जाता है और न्याय की उम्मीद खत्म हो जाती है । सामान्य न्यायालय में जाने से वे घबराती हैं । मेरा इसलिए निवेदन है कि जो हमारे समाज का लक्ष्य है, वास्तव में ज्यादातर महिलाएं पीड़ित होती हैं चाहे वे परित्यक्ता हो या दुर्घटनावश सामाजिक अन्याय या उत्पीड़न का शिकार हों, महिलाओं को न्याय देने की दिशा में जो कुटुम्ब न्यायालय काम कर रहे हैं उसके लिए जो संशोधन लाया गया है, मैं इसके लिए हृदय से आभारी हूं और अभिनन्दन करती हूं और अपनी शुभकामनाएं व्यक्त करती हूं और आशा करती हूं कि इस संशोधन के माध्यम से हमारे पारिवारिक न्यायालयों में जो विकृतियां हैं वह दूर हो सकेंगी । मुझे आपने समय दिया, इसके लिए आपका धन्यवाद ।

PROF. SAURIN BHATTACHARYA (West Bengal): Mr. Vice-Chairman, Sir, it is very meet and proper that during this discussion at one stage, perhaps at the conclusive stage, you are in the Chair. You must be well-versed with all legal aspects of the matter. One thing which touches us very much Is that the aims and objects of the Bill stand in the name of the late lamented Member, Dinesh Goswami. We may consider it a sort of an epitaph to his memory. The issue which has been covered in this Bill, that is, Amendment Bill, is very limited. But the object of the original Bill is pretty wide and essentially represents social problems. There are problems in the field of social relations like the question of talaq, the question of dahej 3tc.

But perhaps the family courts deal with much wider things really, the whole gamut of family life. This Bill seeks to ensure that the decisions arrived at in the family courts are not very much delayed in the name of appeals and other things, appeals in normal courts. Where there are no family courts, it would be the responsibility of the ' Magistrate to give a verdict on maintenance, against which a revision petition can be filed, but nothing more.

The original Act is of 1984. Before that, it was ' part of the Criminal Procedure Code, 1973. The 1984 Act came after eleven years. Now, it is seven years since this Act is in force. This Bill was introduced in 1990. The basic point is not so much the legal point. But the question is, how

[Prof. Saunn Bhattacharya] strong strides,: would be made by us in the matter of straightening up social tension as embodied in family life in our country? The issues covered by it may ruin or wreck the family, or, on the contrary, may also strengthen family life. Many of these are rooted in our long-standing social practices. It is our national trait that we give up nothing, though we may adopt many things in our progress. Therefore, the things which should have been a matter of the past, long before, are still plaguing us and in these small doses, what can be called homoeopathic doses, social reforms are sought to be dished out. But even then, that meek effort also becomes infructuous in view of non-co-operation from many, or, refusal to toe the line, or, lack of financial resources.

When the Government of India takes up certain responsibilities, it is their responsibility also to consider the financial and other aspects of the matter. This Bill has no Financial Memorandum. Perhaps, it is not required. But there are other financial aspects. An appeal was made. The States which have not been able to set up family courts should be helped to set up family courts by providing them with finance. Whether it is a question of just finance, or, there are other factors too, must be looked into. These are aspects which act as impediments in the implementation of these laws.

We may feel satisfied that we have another law on the statute book. But many of our laws remain unimple-mented, without helping those for whom these are ostensibly meant. This aspect must be taken into account. Gunnar Myrdal made a comment in respect of India that India has all types of laws, but no implementation. This observation was made about a quarter of a century back. Ours is an ancient country. We do not know how old it is. There are different opinions. But whatever may be the ancient nature of our civilisation, twenty-five years is nothing. It is half of the period since our Independence. But even after twenty-five years, if we find that we make laws but we are not prepared to implement them, it is really charging us with hypocrisy. Let it not be covered with hypocrisy, but with sincere implementation.

With this appeal to the hon. Minister through you, Mr. Vice—Chairman, I conclude.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI RANGARAJAN (KUMARAMANGALAM): Mr. Vice-Chairman, firstly; I would like to thank all the participants in the debate for the support as well as their contribution in the discussion of this amending Bill.

Sir, actually the matter deals with a very small field and the objective of the Bill in it self is very limited, but major issues have been raised, especially, the question that this Bill has not been extended to many States insofar as it's operation is concerned. It is a relevant point which has been brought to the notice of this Government, not once but many a time. often during Starred Questions by means of Unstarred Questions. We have also brought to the notice of the hon. Members that under the scheme of the Act it is for the States to intimate the Central Government about their readiness to extend the provisions of the Act The reason why it has been left to the States is that it is the State which has to provide the infrastructure and there are many States where customs are already existing, where it is not necessary. For example, in the North Eastern region, they do not want to have Family courts. They are having an existing system by which they solve their family disputes or disputes of matrimonial nature on their own. But it is an issue which we have

raised. The Government has addressed letters to the State Governments. saying that if you could specify the difncuLies that you are facing while bringing into effect the Act in the various, districts of your State, the Centre could come to your help, the Centre could sift and sort out the difficulties. But the Union Government is particularly interested to see that at least where no other alternative is available, the Family Courts Act could be brought into eftct.

Mr. Vice-Chairman, Sir, the major point, wihich most people have raised ?s dealing with this aspect, but there are other issues which have been raised with regard the quer-ticn of marriage as a basis of the family, the sccpe of matrimonial life as well as equal rights for women. Hon. Member Sarlaji has already moved an amendment specifically for inclusion ot a new section 1A to amend section 4. I think it would be my duty to bring to her notice sub-sections (3) ard (4) of section 3 which lay down that among the qualifications which are there, the State would endeavour while appointing persons as Jud des to ensure that persons committed to the need to protect and presem e the institution of marriage and to promote the welfare of children and qualified by reason of experience and expertise, to promote the settlement of disputes by conciliation and counselling, are selected and aluo preference shall be given to women. So, it is, according to me, at the moment enough. May I also submit that anybody who adheres to the Constitution cannot claim in any form that he does not believe in equal status of women. That is fundamentally enshrined in our Constitution and a person to be a Judge of any Court to, in any manner, say that the is not committed to equal status for women, I think, would re ally be the worst act that any person whe ciaims to be in any judicial capacity can do. He would be violating his oath under the Constitution.

But I would like also to move forward to say that I do understand the point of view raised by the honourable Member, because strong feelings are often expressed in matrimonial courts ana, in the process of giving justice, often in the past we have noticed that the amount of support that the weaker and fair sex require in such a judicial proceeding is often not available—and that is exactly why the Family Courts Act in itself came ino being. It is not just a by-the-way Act It is taking into consideration the fact that family is an important unit of the social structure, and it is keeping that in mind that this was moved.

With regard to the amendment that has tsen moved by honourable Madan Bhatiaji, I would like to submit...

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): They will move them at the appropriate stage.

SHKI RANGARAJAN KUMARA-MANGALAM: They have almost spokea about them in their own way. Bhatiaji, I suppose, will be moving it.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): He has not spoken; he will get the opportunity.

SHRI RANGARAJAN KUMARA-MANGALAM: The amendments that they have brought forward...

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): They are entitled to move them, speak on them and convince the House that the amendments should be accepted.

SHRI V. NARAYANASAMY- The district you are forming on population basis is not a Draeticable oae.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Please. Mr. Narayanasamy, let him complete.

SHRI MADAN BHATIA (Nominated): Sir, the honourable Minister was going to make some comments on the amendment that I have moved.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): When you move the amendment, he can.

SHRI RANGARAJAN KUMARA-MANGALAM: I would, I think, reserve the comments, though I do think that what Bhatiaji has brought forward deserves consideration. But we would like to go into it a little more deeply because it deals with interpretation and various factors on whether the mere amendment proposed by Mr. Bhatia would suffice or we would have to to take further steps in the matter. So I would request him not to press the amendment. We would from the Government sids, definitely investigate this matter.

With regard to the point raised by Saralaji, I would request her not to press the matter. Government is definitely seized of the matter. If there is any particular way in which she feels that these words "that a person who believes in equality of men and women" have to be inserted and if she feels that the present provisions are not sufficient in the real sense of the term, we will consider it at the appropriate...

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Mr. Minister you are forestalling the right to move the amendment

SHRI RANGARAJAN KUMARA-MANGALAM: She can move it, of course. I am not trying to cut off her right to move. I am only meeting the arguments so that after they move they do not say, "Now I would like to withdraw it in that situation." Often it may be better to face it earlier.

Mr. Vice-Chairman, Sir, with regard to the other suggestions that honourable Members have made, I am sure they would appreciate the intentions of the Government in bringing forward this Bill—and the idea is to ensure that anybody who either goes for maintenance in the Family Court or in criminal courts, they are at an equal situation, they are at par, and I think that objective is achieved. I would be obliged if the House does adopt the Bill.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): The question is:

> "That the Bill further to amend the Family Courts Act, 1984, be taken into consideration."

The motion was adopted.

We shall now take up clause-by-clause consideration of the Bill. There are two amendments for the insertion of new clause 1A—Amendment No. 3 —by Shri Madan Bhatia. Would you like to move it, Mr. Bhatia?

SHRI MADAN BHATIA: Sir, I respectfully submit that I have already discussed this matter with the honourable Minister, and the Minister has made a statement that this matter would be considered fay the Government In view of this it is not necessary for me. I would only like to add just a few words, if you would kindly permit me, Sir. The object of this amendment—I am happy to see that the hon. Minister has seen my point of view—was this, that section 7 of the Family Courts Act says that all matters mentioned in section 7 regarding disputes between husband and wife will be heard and decided by the Family Courts, and not by the District Courts. There are one or two High Courts in the country which have ordinary original

jurisdiction like the Bombay High Court and the Delhi High Court and, may be, the Madras High Court. Now the question is What about the ordinary original jurisdiction of the High Court relating to these matters because the expression used in section 7 is that matters will be heard by the Family Courts and not the District Courts? And section 8 says that matters pending in the District Courts will be transferred to the Family Courts. What about the jurisdiction of the High Court, and what about the matters which are pending in the High Court? They will be transferred to these Family Courts or they will be heard by the Family Courts only if the High Court is treated as the District Court. My amendment was that the expression "District Court" in this Act should be deemed to include the High Court so that all the matters which are pending in the High Court may also stand transferred to the Family Court that the High Court should not in future also have any jurisdiction in regard to these family matters and that only She Family Courts should have the jurisdiction. It was only for the purpose of this jurisdiction,

Section 5 of the Delhi High Court says that notwithstanding anything to the countrary contained in any other law or any other law for the time being in foree. the Delhi High Court shall have also the jurisdiction to thear matters the value of which is above Rs. 1 lakh. So, a question will arise that without the Delhi High Court's jurisdiction being taken away by the Family Courts Act, if the value of a dispute between husband and wife is more than Rs. 1 lakh, it will not be heard by the Family Courts. So, it was for the purpose of removing these difficulties that I wanted to introduce this clause by way of a definition that "District Court" will include "High Court" in the exercise of its ordinary original jurisdiction. The hon. Minister has made this statement. In view of this, I shall not move my amendment.

Thank you, Sir. New

Clause 1A

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Now amendment No. 4 by Shrimati Sarla Maheshwari.

श्रीमती सरला महेश्वरी : मैं प्रस्ताव करती हूं कि—

(4) पृष्ठ—1 पर, पंक्ति 4 के पश्चात् निम्नलिखित अन्त:स्थापित किया जाये, अर्थात् '--

"1क० कुटुम्ब न्यायालय अधिनियम, 1984 की धारा 4 की उपधारा (4) के खण्ड (क) में "व्यक्तियों" शब्द के पश्चात् "जो स्त्री और पुरुष की समानता में विश्वास रखते हों" शब्द अन्त:स्थापित किये जायें ।"

The question was proposed.

उपसभाध्यक्ष महोदय, दुर्भाग्य से मैं मंत्री महोदय की प्रतिक्रिया से पहले ही अवगत हो गयी हूं, लेकिन मैं मंत्री महोदय की राय से अपने आपको सहमत नहीं कर पा रही हूं क्योंकि मंत्री महोदय ने जब यह पढ़कर सुनाया, मैंने देखा है कि इसमें कई कैटेगरीज दी गयी हैं । न्यायाधीशों के चुनाव के बारे में आप पत्नी और बच्चों के कल्याण में विश्वास करते हैं, तो यह जो कैटेगरीज इसमें दी गयी हैं, आप खुद देखें तो जाहिर है कि अगर कुटुम्ब न्यायालय विधेयक के जरिए आप कुटुम्ब न्यायालय में एक जज को नियुक्त करते हैं तो इस बात को निश्चित रूप में मानकर करते हैं कि वह विवाह संस्था में विश्वास करता है परिवार के कल्याण में विश्वास करता है । आपने इस बात को और कैटेगरीज में इंक्लूड किया है तो जब आप तमाम कैटेगरीज इंक्लूड कर सकते हैं तो इस कैटेगरी को इंक्लूड करने में क्या आपत्ति हो सकती है कि वह न्यायाधीश स्त्री-पुरुष की समानता में विश्वास करता हो ?

[Shri Bhaskar Annaji Masodkar]

उपसभाध्यक्ष महोदय, मेरे इस संशोधन के पीछे जो मान्यता थी, वह यह थी कि पिछले दिनों हमारे अनुभव बहुत ही कटु रहे हैं । अभी चंद महीनों पहले सुप्रीम कोर्ट के एक भूतपूर्व न्यायाधीश मैं उनका नाम नहीं लेना चाहूंगी, अपनी स्त्री विरोधी कटु उक्तियों के लिए काफी प्रसिद्ध हो चुके हैं जिसमें समानता के अधिकार के विरुद्ध उनकी कई उक्तियां आई थीं जिनका कि कई महिला संगठनों ने काफी प्रतिवाद किया था । इसके अलावा राम का नाम जाप करने वाली पार्टी के सिद्धांतवेत्ताओं ने भी स्त्रियों की समानता के विरुद्ध अपनी धार्मिक रूढ़िबद्धता के जरिए प्रतिक्रियावादी बातें कही हैं । तो एक तरफ प्रकृति को अगर आप धार्मिक रूढ़ियों से बांधते हैं फिर आप समानता की बातें कैसे कर सकते हैं? हमारा अतीत बताता है कि किस तरह से धर्म के नाम पर शाहबानो केस के जरिए स्त्रियों के अधिकार छीन लिए गए और हमारी समानता का नारा हवा में लटकता रहा इसीलिए उपाध्यक्ष महोदय मेरी यह मान्यता है ।

उपसभाध्यक्ष महोदय, मंत्री महोदय ने कहा कि मुझे फिर यह न कहना पड़े कि मैं इसको विदड्रा करती हूं, इसको वापिस लेती हूं । मेरा उनसे निवेदन है कि इस बात की गारंटी तो आप ही कर सकते है कि मैं इस संशोधन को वापिस लूं या नहीं लूं? यह आप पर निर्भर है । मेरी यह मान्यता रही है और आपकी क्या मान्यता है, वह आप बताइए ?

4.00 P.M.

SHRI RANGARAJAN KUMARAMANGALAM: Mr. Vice-Chairman, Sir, I do appreciate the sentiments expressed by the hon. Member. But I .think it may be relevant to bring to the notice of the hon. Member that on the reference which she is making with regard to a Judge of the Supreme Court subsequently he himself said that that was a wrong report of the facts in the press. Of course, may be afteri protests he did say that he was wrongly reported. But what is important is that by putting the definition that a person believes in equality does not in any way really change the situation because under the Constitution, equality of both man and woman in the form of status as well as against the discrimination on the ground of sex is very clearly there. As you said it is possible for the persons in high office to take stands which are discriminatory in nature. That is the reason why you wanted to really put it. The truth is that the words more we repeat them, the more we add them, it does not ensure that. But it is ultimately the conduct which counts. I am sure the hon. Member will agree with me because the Constitution definitely has a far higher place than a mere statute. In the Constitution, discrimination on the ground of sex is not allowed. It is assumed that anybody who takes oath under the Constitution as a Judge will definitely abide by it. By merely putting it in the Family Courts (Amendment) Bill, we are not going to strengthen it in any manner. I would say only this much. I would like to assure the hon. Member that it would be not just the intention but the objetcive of the Government is to ensure that every single judge who is appointed to the Family Court is definitely clear on this point of view.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): The question is;

> (4) That at page 1 after line 4, the following be *inserted,* namely: —
>
> "1A. In section 4 of the Family Courts Act, 1984 in sub-section (4), in clause (a) after the word "persons" the words "who believe in the equality of man and woman and..." shall be inserted."

The motion was negatived.

Cavse 2—Anadment *of Chabtor V.*

SHRI RANGARMAN KUMARAMANGALAM: Sir, move:

That at page 1, line 16, *for* the figure "1990" the figure "1991" be *substituted.*

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Now, I put the amended clause 2 to vote. The question is:

That clause 2, as amended, stand part of the Bill.

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 1 — *Short title.*

SHRI RANGARAJAN KUMARA-MANGALAM: Sir, I move:

That at page 1, line 4, for the figure "1990" the figure "1991" be *substituted.*

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Now, I put clause 1, as amended, to vote. The question is:

That Clause 1, as amended, stand part of the Bill.

The motion was adopted.

Clause 1, *as amended, was added to the Bill.*

Enacting Formula

SHRI RANGARAJAN KUMARA-MANGALAM: Sir, I move;

That at page 1, line 1, for the word "Forty-first" the word "Forty-second" be *substituted.*

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI BHASKAR ANNAJI MASODKAR): Now, I put the Enacting Formula, as amended, to vote. The question is:

That the Enacting Formula, as amended, stand part of the Bill.

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill. SHRI RANGARAJAN KUMARA-MANGALAM: Sir, I move:

That the Bill as amended, be passed.

The question was put and the motion was adopted.

STATUTORY RESOLUTION APPROVING PRESIDENT'S PROCLAMATION UNDER ARTICLE 356 OF THE CONSTITUTION IN RELATION TO MEGHALAYA AND MOTION FOR REVOCATION OF THE PROCLAMATION

THE MINISTER OF STATE DST THE MINISTRY OF PARLIAMENTARY AFFAIRS AND THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M. M. JACOB): Sir I rise to move:

"That this House approves the Proclamation issued by the President on the 11th October, 1991, under Article 356 of the Constitution in relation to the State of Meghalaya."

Copies of the Proclamation and reports of the Governor of Meghalaya have been laid on the Table of the House. The Governor of Meghalaya, in his report dated 8th October 1991, addressed to the President of India, had reported that as there were reports that some members of the ruling Meghalaya United Parliamentary p-rtv had switched their support the the Onposition-led United Meghalaya Parliamentary Forum, a special Session of the State Legislative Assem-blv was convened on 7th August 1991, on the advice of the Chief Minister, so that Shri B. B. Lyngdoh, the Chief Minister, could prove his majo-